

Application No. 10/775,076
Reply to Office Action of 11/29/2005

REMARKS / ARGUMENTS

Claims 1, 3, 4, 8, 10, 11, 15, 16, 18, 19, and 21-27 remain presently pending. Claims 12-13 remain withdrawn. No claim is being currently amended.

Claim rejections – 35 U.S.C. §103

With respect to the rejection to claims 1, 3, 4, 8, 10, 11, 15, 18, 19, 23-27 under 35 U.S.C. 103(a) as being unpatentable over Barker in view of Donovan, reconsideration by the Examiner is respectfully requested on the following grounds.

Barker discloses the use of separate shielding panels 22, 24, 26 for preventing fragments from being discharged in the event of an inadvertent initiation of the charges 12. The panels are contained in an expandable bag 32, the primary purpose of which is to allow for expansion of the explosion gases while retaining all the contents of its interior (col. 5, lines 41-44). The bag 32 is clearly shown as a tubular member, i.e. not as a seamless enclosure defining a closed end. While Applicant agrees that grocery bags have a closed end, such grocery bags do not define a seamless enclosure as claimed. Although Barker does not clearly teach that bag 32 even has a closed end, however if one was indeed to be formed, it would necessarily be simply defined through folding of one end of the tube ("subsequently folded in a manner that allows it to be placed in transportation container 24", col. 5, lines 36-38). As such the bag 32 cannot be said to define a seamless enclosure with an open and a closed end.

In addition, a skilled reader would clearly not be led, either by the teachings of Barker or Donovan, to believe that the top or bottom flap of the container 34 in Barker constitutes an attachment system for maintaining the first panels in a deployed configuration. With respect, the Examiner is not entitled to read the prior art differently than one skilled in the art would. The Container 34 is clearly described as being, for example, a cardboard box. The flaps of cardboard boxes are usually free to move between a closed and an open configuration, and therefore would not, absent of more specific teaching to this effect, constitute an attachment system as claimed.

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As stated above, the primary purpose of Barker's expandable bag 32 is to expand under the effect of the explosion gases. The material disclosed by Donovan is not said to be expandable. In fact, while flexible, the material disclosed by Donovan may be used to fabricate armor (col. 1, line 49), protective vests, protective curtains and armored liners in vehicles (col. 6 lines 5-9), all of which point away from the material being expandable to the level required in order to perform the function of the expandable bag 32 in Barker. As such, there is insufficient motivation or suggestion as to the desirability of combining these references. As a person skilled in the art would not expect the material in Donovan to function as an expandable bag as set forth in Barker, the proposed modification of the teachings of Barker and Donovan to permit their combination such as to arrive at the present invention would render the prior art invention being modified unsatisfactory for its intended purpose. Thus, as the proposed modification (e.g. making the material of Donovan more expandable such as to perform the function of Barker's expandable bag) renders the prior art invention being modified unsatisfactory for its intended purpose, there can be no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984). (see also MPEP 2143.01,V.) Thus, the allegation of motivation is not sound, and therefore does not satisfy what is required to maintain a proper finding of *prima facie* obviousness.

In addition, with specific regard to the objection to claim 3, the separate shielding panels 22, 24, 26 in Barker prevent fragments from being discharged in the event of an inadvertent initiation of the charges 12, while the container 34 is described as being for example a cardboard box, i.e. not adapted to retain explosive fragments. As the two elements have very different purposes, substituting the structure of the outer container 34 for the disclosed shielding panels 22, 24, 26 would not constitute mere duplication of the essential working parts of the device nor rearranging parts of the invention. Moreover, Barker does not disclose a second attachment system on the inner casing for maintaining the third panels in a deployed configuration. Therefore it is submitted dependent claim 3 recites additional structure which is patentably distinct from Barker and Donovan, and thus that independent claim 3 is both novel and inventive thereover.

It is therefore submitted that at least independent claims 1 and 23 recite structure which is patentably distinct from Barker and Donovan in combination, and thus that

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independent claims 1 and 23 are both novel and inventive thereover. At least in view of their dependence on claims 1 or 23, dependent claims 3, 4, 8, 10, 11, 15, 18, 19, 24-27 are similarly both novel and inventive over the cited references. Reconsideration of the rejection of claims under 35 U.S.C. 103(a) is therefore respectfully requested.

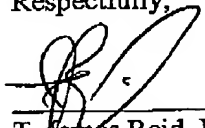
Applicant has noted the absence of objections to claim 16, and as such anticipates receiving confirmation that claim 16 would be allowable if rewritten in independent form.

Allowance of all pending claims at an early date is respectfully solicited.

In the event that there are any questions concerning this amendment or the application in general, the Examiner is respectfully urged to telephone the undersigned so that prosecution of this application may be expedited.

Respectfully,

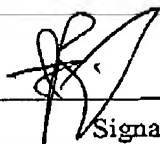
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